

Section 3

Economic Opportunities for Low and Very Low-income Persons

Indiana Affordable Housing Conference

September 14, 2004 Indianapolis, IN

Section 3 Summary of Course

- > Historical perspective
- > General provisions
- ➤ Regulation 24 CFR § 135
- > Definitions
- > Applicability
- > Recipient responsibilities
- > Preferences and contracting
- > Complaints and compliance review
- > Reporting and record keeping

History/Background

- > 1968 Became a provision of the HUD Act (12 U.S.C. 1701u -Section 3)
- > 1974 CDBG Program Included
- > 1992 Clarified coverage and facilitated implementing regulations
- > 1994— Interim Rule issued to establish standards and procedures: 24 CFR § 135

Purpose of Section 3

To ensure that economic opportunities resulting from HUD financial assistance will be directed to low and very low-income persons - particularly those receiving government assistance for housing.

§ 135.1

Applicability

- > Public and Indian Housing
 - Development assistance
 - Operating assistance
 - Modernization assistance
- Housing and Community Development
 - Housing rehabilitation (including leadbased paint abatement)
 - Housing construction
 - Other public construction

Thresholds

Public and Indian Housing Threshold: None

(no threshold for PIH Authorities)

Housing and Community Development Threshold:

Recipient/Project - \$200K Contractor/Subcontractor - \$100K

§ 135.3(a)3

Applicability to Entire Project

Section 3 requirements apply to the entire project or activity, regardless of whether it is fully or partially funded.

(Example: leveraged private funds associated with HOPE VI or CDBG.)

Section 3 requirements also apply to Indian Housing Authorities.

Definitions

Employment opportunities generated by section 3 covered assistance

PIH assistance: All employment opportunities.

Housing & Community Dev.: Employment associated with building trades, including management and administrative support, architectural, engineering and professional services

Definitions (continued)

Section 3 Resident:

- > Public Housing Resident, or
- Resident of metro area or non metro county in which the Section 3 covered assistance is expended, and who qualifies as a low-income or very lowincome person.
 - Low-income 80% median area income
 - Very low-income 50% median area income

§ 135.5

Indianapolis MSA Income Limits*

Very Low

- 1 person \$ 22,450
- 2 person \$ 25,650
- > 3 person \$ 28,850
- 4 person \$ 32,050
- > 5 person \$ 34,600
- 6 person \$ 37,200

LOVY

- 1 person \$ 35,900
- > 2 person \$ 41,000
- > 3 person \$ 46,150
- > 4 person \$ 51,300
- > 5 person \$ 55,400
- > 6 person \$ 59,500

Definition (continued)

Section 3 Business Concern

- 51% or more owned by Section 3 Residents, or
- > 30% of employees are Section 3 Residents; or
- 25% of subcontracts committed to Section 3 Businesses.

Procurement Standards

Section 3 regulations do not supersede the general requirement that (material only) procurement transactions be conducted in a competitive manner.

Consistent with 24 CFR § 85.36(c)(2), Section 3 encourages a geographic preference in the evaluation of bids.

§ 135.11(a)

Federal Labor Standards

Trainees hired under Section 3 may work subject to HUD determined prevailing wage rates and ratios of apprentices to journeymen in approved training programs.

§ 135.11(c)

Minority Business Enterprise

- A minority business enterprise shall be required to present Section 3 certification to receive preference.
- > Section 3 of the HUD act is raceneutral.
- The preference provided by this federal act is based on income and location.

Collective Bargaining Unions

Contracts awarded on Section 3 governed projects are made without regard to affiliation to any Collective Bargaining Union.

Executive Order 11246

- The recipient shall ensure full compliance with E.O. 11246 - equal treatment without regards to race, religion, color or ethnic background.
- The recipient shall ensure that all contractors and subcontractors participating on Section 3 governed projects comply with E. O. 11246.

§ 135.11(e)

Numerical Goals

Employment:

30 percent of new hires annually (counted for up to 3 years).

Applies to:

- PIH Programs
- Firms managing 500+ units w/housing assistance
- Community Development Assistance

§ 135.30(b)

Numerical Goals (continued)

Contracts

>10 percent of the total \$ amount of all Section 3 covered contracts for building trades work.

>3 percent of the total \$ amount of all other Section 3 covered contracts.

§ 135.30(c)

Safe Harbor and Compliance

- A recipient that meets numerical goals will be considered in compliance.
- A recipient that has not met the numerical goals has the burden of demonstrating why.
- All documented efforts taken to assist Section 3 residents and businesses will be considered.

§ 135.30(d)

Recipient Responsibilities

- Notifying residents
- Notifying contractors and incorporating Section 3 clause
- Facilitating training and employment of residents
- Awarding contracts- Sec 3 Bus.
- Assisting with compliance among contractors
- Documenting actions to comply
- > Attempt to reach numerical goals

§ 135.32

Eligibility for employment and contracting

A Section 3 resident must meet the qualifications of the position to be filled.

§ 135.34(c)

A Section 3 business concern must have the ability and capacity to perform successfully under the terms and conditions of the proposed contract.

§ 135.34(a)(2)

Section 3 Clause

All section 3 covered contracts shall include the Section 3 clause found at 24 CFR § 135.38 in its entirety, verbatim – parts A through G.

§ 135.38

Compliance Reviews

- Conducted for selected recipients and contractors to determine compliance
- Consists of a comprehensive analysis and evaluation of compliance
- Recipient will be advised of deficiencies for remediation
- Continued noncompliance may result in debarment, suspension and limited denial of participation pursuant to 24 CFR § 24

§ 135.74

Section 3 Complaints Who May File a Complaint?

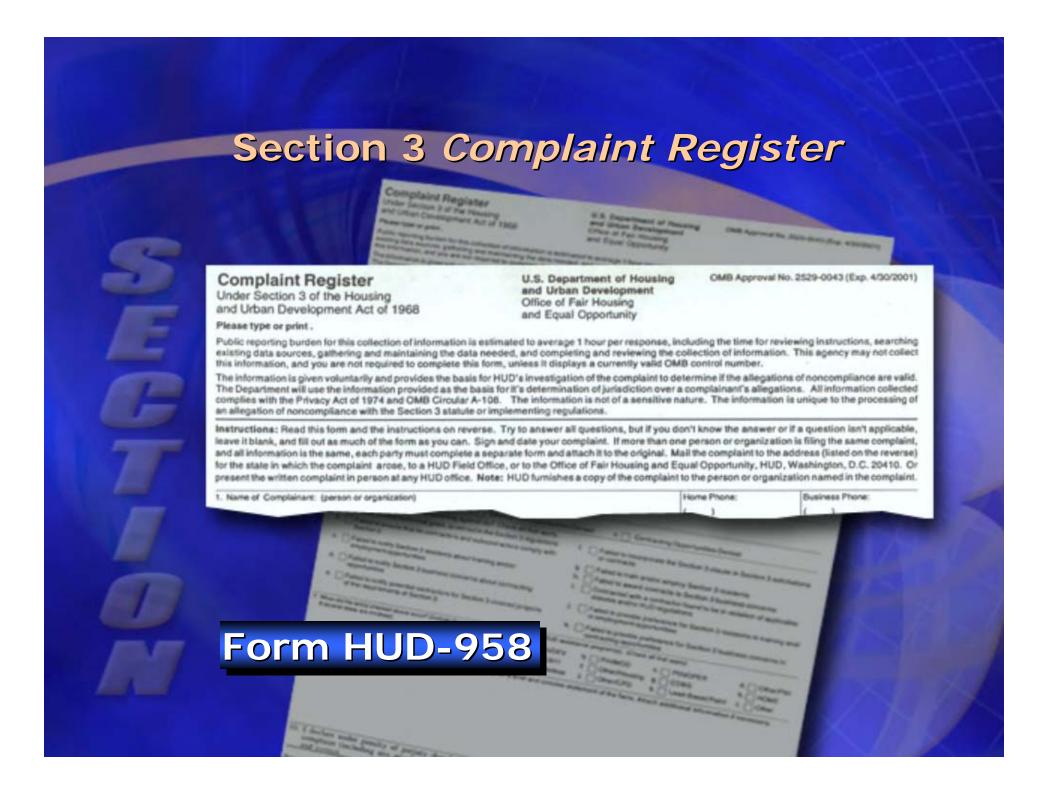
- > Section 3 Resident
- > Section 3 Business Concern
- A Representative for either of the above

§ 135.76(a)

Where Is A Complaint Filed?

Assistant Secretary for FHEO U.S. Department of Housing and Urban Development 451 7th Street, Room 5200 Washington, DC 20410

§ 135.76(b)



Issues For Non-Compliance

Failure to:

- Meet numerical goals;
- Ensure that contractors and subs comply with Section 3;
- Notify Section 3 Business Concerns about contracting opportunities;
- Notify potential contractors about Section 3 requirements;

Issues For Non-Compliance (continued)

Failure to:

- Incorporate the Section 3 Clause in solicitations or contracts;
- Train and/or employ Section 3 Residents;
- Award contracts to Section 3 Business Concerns
- Provide preference for Section 3 Residents and Section 3 Businesses

Resolution of Complaint

The recipient has 30 days after receipt of complaint to submit a written response if they believe the complaint lacks merit.

The recipient has 60 days to resolve the matter with the complainant if they determine the complaint has merit.

Resolution of Complaint (continued)

- Sanctions that may be imposed include debarment, suspension and limited denial of participation.
- HUD may investigate a complaint directly.
- Retaliatory acts against the complainant are prohibited.
- Complainant may exercise the right to seek redress through judicial procedures.

§ 135.76(g) to (j)

Reporting & Recordkeeping

- ➤ Recipients are required to submit an annual report for the purpose of determining the effectiveness of Section 3. (HUD Form 60002)
- ➤ HUD shall have access to all records, reports and other documents that are maintained to demonstrate compliance with Section 3.

§ 135.90 to 135.92

Collaboration for Success

Appendix to Regulations:

- 20 examples of efforts to provide training and employment opportunities;
- 22 examples of efforts to award contracts to Section 3 business concerns; and
- 3 examples of procurement procedures to provide preference for Section 3 business concerns.

Where to get more information

- > HUD's Office of Economic Opportunity (202) 708-3633
- > Local HUD Field Office
- Regulation 24 CFR Part135: www.gpoaccess.gov/cfr/index.html
- HUD Websitewww.hud.gov/offices/fheo/section3/section3.cfm

